



MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: *TL for* Jennifer Steingasser, Deputy Director, Development Review & Historic Preservation
DATE: January 18, 2019
SUBJECT: ZC #16-10A – Modification of Consequence to the approved 400 Florida Avenue, NE PUD

I. RECOMMENDATION

After a review of the request, the Office of Planning (OP) concurs with the applicant's submission that the proposed refinements can be considered as a **modification of consequence**. Per Subtitle X Section 703.4, a change to conditions in the PUD order, as contemplated here, is an example of a modification of consequence and can be considered on the Commission's consent calendar.

The project will be constructed in two phases, and the proposed modifications seek to tie the timing of the public space improvements to the adjacent portion of the project. This arrangement should be more efficient and minimize damage that construction activities could cause to new sidewalks, planters, furniture, street trees and other public space amenities. As such, OP recommends that the proposed modifications be **approved**.

II. BACKGROUND

Subtitle Z § 703 provides for Zoning Commission consideration of a modification of consequence to an approved Planned Unit Development (PUD). The definition of modifications of consequence is as follows:

703 CONSENT CALENDAR – MINOR MODIFICATION, MODIFICATION OF CONSEQUENCE, AND TECHNICAL CORRECTIONS TO ORDERS AND PLANS

...

703.3 For the purposes of this section, the term “**modification of consequence**” shall mean a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance

703.4 Examples of **modification of consequence** include, but are not limited to, a proposed change to a condition in the final order, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission.

As this application requests to modify conditions of the order, it is appropriately considered a modification of consequence. A modification of consequence requires the establishment of a

timeframe for the parties in the original proceeding to file comments on the request and the scheduling of a date for Commission deliberations.

III. MODIFICATION REQUEST

The project will be constructed in two phases, and the proposed modifications seek to tie the public space improvements to the adjacent portion of the project. See pages 3 and 4 of Exhibit 1.

- As currently structured, the Order would require public space improvements north of the property to all be constructed prior to any Certificate of Occupancy (C of O) for the site. The proposed revised conditions would tie the improvements on 4th Street to the C of O for the hotel portion of the project, and the improvements on 5th Street to the C of O for the residential portion.
- The current Order does not discuss the timing of public space improvements immediately adjacent to the site. To add clarity, the applicant therefore proposes new language in the Order that would also tie the improvements to the C of O for the relevant portion of the building.

Benefits and Amenities

No changes are proposed to the benefits or amenities of the project. The design of the public space improvements would not be changed.

Changes in Previously Approved Relief and Flexibility Requests

The applicant proposes no changes to previously approved flexibility.

IV. ANALYSIS

The proposed timing of the public space improvements should be more efficient and minimize damage that construction activities could cause to new sidewalks, planters, furniture, street trees and other public space amenities. The design of the public space would not change, and the request involves no new areas of relief. The changes in conditions of the Order, therefore, clearly fall under the category of modifications of consequence, and OP can recommend their approval.

V. ANC / COMMUNITY COMMENTS

As of this writing the record contains no comments from the community or the ANC.